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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANA EAGLES

Appeal 2009-000296
Application 10/717,859
Technology Center 1700

Decided: October 8, 2009

Before JEFFREY T. SMITH, LINDA M. GAUDETTE, and
JEFFREY B. ROBERTSON, *Administrative Patent Judges*.

GAUDETTE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision finally rejecting claims 26-56 (Final Office Action, mailed Aug. 24, 2006, 1), the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

The invention is directed to industrial fabrics, for example, fabrics used in the forming, pressing or dryer sections of a papermaking machine. (Spec. 1:5-13.) Independent claim 26, the sole independent claim, is illustrative of the subject matter on appeal, and is reproduced from the Claims Appendix to the Appeal Brief (“App. Br.”), filed Aug. 30, 2007:

26. (Previously Presented) A textile structure made in a manner comprising the steps of:

spiral winding machine direction (MD) yarns to form a system having a defined width; and

depositing a pattern of cross machine direction (CD) elements onto said system of MD yarns; wherein said CD elements are formed while being deposited onto said system of MD yarns.

The Examiner relies on the following evidence to establish unpatentability (Examiner’s Answer (“Ans.”), mailed Nov. 27, 2007, 3):

Rexfelt	5,360,656	Nov. 1, 1994
Davenport	2002/0139503 A1	Oct. 3, 2002

The Examiner maintains (Ans. 2-3), and Appellant requests review of the following grounds of rejection (App. Br. 5; Reply Brief (“Rep. Br.”), filed Feb. 1, 2008, 6)¹:

¹ The Examiner has withdrawn the rejection of claims 26-56 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Denton. (Ans. 3.)

1. claims 26-35, 39-42, and 44-56² under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Rexfelt; and

2. claims 26-56 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Davenport.

Appellant has not presented separate arguments in support of patentability of any particular dependent claim(s). (App. Br. 13.) Accordingly, we decide the appeal as to each ground of rejection on the basis of independent claim 26. *See* 37 C.F.R. § 41.37(c)(1)(vii).

*Rejection of claims 26-35, 39-42, and 44-56 under 35 U.S.C. § 102(b)
as anticipated by or, in the alternative, under 35 U.S.C. § 103(a)
as unpatentable over Rexfelt*

With respect to the first ground of rejection, we consider the following issue: has Appellant shown that the Examiner reversibly erred in finding that claim 26 reads on Rexfelt's textile structure, which is made by spirally winding a fabric strip of yarn material and creating CD elements by weaving?

We answer this question in the negative for the reasons explained below. Rexfelt

relates to a press felt for use in a papermaking machine, and to a method of manufacturing the press felt, which is of the type comprising a woven base fabric which is made of yarn material and is endless in the machine direction (i.e. in the running direction of the press felt in the papermaking machine), and one or more layers of fiber material arranged on the base fabric.

² Appellants incorrectly identify claims 36-38 and 43 as subject to this ground of rejection. (App. Br. 5; Rep. Br. 6.)

(Col. 1, ll. 6-13.)

In the description relied upon by the Examiner (*see Ans.* 4-5), Rexfelt describes a “flat-woven strip 20 . . . consisting of longitudinal threads (warp threads) [22] and cross threads (weft threads) [24]” (col. 4, ll. 28-32). “The strip 20 is placed around [two rotatably mounted] rolls 10, 12 with a certain pitch angle.” (Col. 4, ll. 41-42.) “The number of spiral turns 32 placed on the rolls 10, 12 is dependent on the desired width B on the final base fabric.” (Col. 4, ll. 49-51.) Rexfelt describes the base fabric, shown in Figure 3, as follows:

Each longitudinal thread (warp thread) 22 of the strip 20 makes an angle α with the machine direction MD of the fabric/press felt. These oblique longitudinal threads 22 run uninterrupted through the entire base fabric layer, whilst the cross threads (weft threads) 24 are interrupted and each have a length w.

(Col. 4, l. 63-col. 5, l. 1.)

Appellant asserts that Rexfelt’s disclosure is limited to “spiral winding of strips of woven fabric material (*Rexfelt*, col. 2, line 67 – col. 3, line 60) and not spiral winding of yarns, as recited in the instant claims.” (App. Br. 10.) Appellant contends that a person of ordinary skill in the art would not interpret “a yarn” as “a fabric strip” and, therefore, Rexfelt fails to disclose “spiral winding machine direction (MD) yarns” as recited in claim 26. (Rep. Br. 7; *see also*, App. Br. 10.) Appellant also argues that “[t]he CD yarns in Rexfelt are a result of weaving the fabric strip and not created while being deposited on a system of MD yarns.” (App. Br. 10.) Appellant has not specifically argued that the textile structure produced by Rexfelt’s method differs from Appellant’s claimed structure. (*Cf.* App. Br. 9 (noting that Rexfelt discloses “[l]ongitudinal threads of the spirally wound fabric

strip of yarn material make an angle with the machine direction of the press felt.”).

With respect to the MD yarns, the Specification states that “while monofilament yarns are used as examples herein, yarns such as multifilaments, bicomponent and other types known to those skilled in the art and suitable for the purpose may also be used.” (Spec. 7:30-8:4.) The Specification describes the claimed “CD elements” as “act[ing] as connectors to lock and stabilize the overall structure.” (Spec. 7:16-17.) The Specification states that the CD elements “*may be formed, for example,* by depositing a polymer orthogonally on one or both surfaces of a system of MD yarns.” (Spec. 7:13-15 (emphasis added).)

The patentability of a product does not depend on its method of production. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

In re Thorpe, 777 F.2d 695, 697 (Fed. Cir. 1985) (citations omitted).

In our view, the Examiner’s findings are sufficient to establish that Rexfelt’s textile structure is identical to Appellant’s claimed structure for the reasons explained in the Answer. (*See Ans. 4-5 and above citations from the Specification.*) Appellant’s arguments are directed to differences in Rexfelt’s and Appellant’s methods of making a textile structure. However, the claims are drafted in product-by-process format and, therefore, to overcome the Examiner’s *prima facie* case of anticipation, Appellant must show that the textile structure resulting from the process steps recited in

claim 26 differs from the textile structure formed by Rexfelt's method. Appellant has not met this burden.³

Accordingly, we sustain the rejections of claims 26-35, 39-42, and 44-56 under 35 U.S.C. § 102(b) as anticipated by Rexfelt and under 35 U.S.C. § 103(a) as unpatentable over Rexfelt.

Rejection of claims 26-56 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Davenport

With respect to the second ground of rejection, we consider the following issue: has Appellant shown that the Examiner reversibly erred in finding that claim 26 reads on a woven base fabric having MD yarns and CD interdigitated loops?

We answer this question in the negative for the reasons explained below.

In the description relied-upon by the Examiner (*see* Ans. 6-8), Davenport discloses “[a]n on-machine-seamable papermaker's fabric ha[ving] a base structure which is a flattened array of a spirally wound multicomponent yarn. . . . In each turn of the spiral winding, the multicomponent yarn has a substantially lengthwise orientation and is joined side-by-side to those adjacent thereto by a fusible thermoplastic material in

³ Appellant is also reminded that during examination, claim terms are given their broadest reasonable construction consistent with the Specification. *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). “[E]ach claim does not necessarily cover every feature disclosed in the specification. When the claim addresses only some of the features disclosed in the specification, it is improper to limit the claim to other, unclaimed features.” *Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 689 (Fed. Cir. 2008) (quoting *Ventana Med. Sys., Inc. v. Biogenex Labs., Inc.*, 473 F.3d 1173, 1181 (Fed. Cir. 2006)).

each of the two layers” (Abstract). The Examiner maintains that the textile structure made by Davenport’s method is identical to Appellant’s claimed structure. (*See Ans.* 9-10.)

Appellant argues that claim 26 requires a pattern of CD elements, whereas Davenport “teaches a woven base fabric having both MD yarns and *CD interdigitated loops.*” (App. Br. 12 (emphasis added).) Appellant points out that Davenport’s CD interdigitated loops are “a) not deposited onto the system of MD yarns, and b) not formed while being deposited onto the system of MD yarns.” (Rep. Br. 11.) However, because Appellant has not explained how Davenport’s CD interdigitated loops structurally differ from the CD elements in the claimed textile structure, Appellant has not shown reversible error in the Examiner’s finding that Davenport anticipates claim 26. *See In re Thorpe*, 777 F.2d at 697.

The rejections of claims 26-56 under 35 U.S.C. § 102(b) as anticipated by Davenport and under 35 U.S.C. § 103(a) as unpatentable over Davenport are sustained.

CONCLUSION

Appellant has not identified reversible error in the Examiner’s rejections. The decision of the Examiner rejecting claims 26-56 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

tc
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